

U. S. PTO Customer No. 25280

Case #5113D

**REMARKS**

Claims 1 – 3, 22, 26, 38, 41, 42, 49, 58, 65, 66, 77, 79, 81, 82, 85, 88, 89, 117, 123, 130, 134, 136, 138, and 141 have been amended. Claims 36, 37, 39, 73 – 76, 80, 101, and 140 are hereby cancelled without prejudice. Claim 151 has been added. Thus, claims 1 – 35, 38, 40 – 49, 58 – 72, 77 – 79, 81 – 85, 88 – 97, 99, 100, 102 – 128, 130, 131, 134 – 136, 138, 140, 141, and 151 remain subject to continued examination. Each of these claims is believed to be in condition for allowance. Accordingly, an action to that effect is requested at this time.

**ART REJECTIONS:**

Most claims were rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent 4,522,857 to Higgins (Higgins '857) in view of U.S Patent 5,610,207 to De Simone (De Simone) or U.S. Patent 5,540,968 to Higgins (Higgins '968) either as a stand alone combination or further in view of various supplemental art. Claims 58 – 64 and 67 – 85 were rejected under 35 U.S.C. 102(b) over 2002/0034606 to Miller et al. Continued rejection on these grounds is respectfully traversed and reconsideration is requested at this time in light of the present Amendment and the following remarks and supplemental declaration.

Applicants note that, as amended, all claims specifically recite a carpet tile having a flame laminated rebond foam cushion, flame laminated polyurethane rebond foam cushion, flame laminated foam cushion, at least one flame laminated layer, flame laminated open cell foam, flame laminated backing, or the like.

U. S. PTO Customer No. 25280

Case #5113D

As regards the rejections based in whole or in part upon the combination of U.S. Patent 4,522,857 to Higgins in view of U.S. Patent 5,610,207 to De Simone, as best understood, the fundamental rationale for the rejections is that it would have been obvious to one of skill in the art to substitute a rebond foam product as taught by De Simone '207 for the foam layer in Higgins '857.

As will be noted in an Examiner's Interview Summary, the undersigned had a personal interview with the Examiner relative to this application (as well as a number of other related applications) on September 15, 2004. During the interview, the undersigned showed the Examiner carpet samples with rebond foam cushions, and discussed the Higgins '857, Higgins '968, and De Simone '207 references, the history and development of carpet tiles, why it would not have been obvious to one of skill in the carpet tile art to use rebond foam in a carpet tile, and several features and embodiments including the flame laminated and hot melt laminated embodiments, foam density, cut, slit or peeled foam, foam ship size, and a supplemental declaration.

As described on pages 33 and 34 of the present application, rebond foam pads for broadloom carpet were known. Such rebond foam pad typically had large chip sizes, low density, non-uniform density, was frangible, fragile, and relatively thick. Also, such rebond foam pads were not used in preformed carpet tiles prior to the invention described in commonly owned U.S. Patent Application 09/721,871 and as described in the present application.

U. S. PTO Customer No. 25280

Case #5113D

In addressing this same rejection in an earlier Amendment, Applicants submitted a first declaration of Richard L. Kilpatrick who holds the position of Director of Development for the company which developed and manufactured the product set forth in the primary reference. This entity Milliken & Company also owns the present application. Applicants also submit herewith a second or supplemental declaration of Richard L. Kilpatrick. A copy of this supplemental declaration is appended for incorporation into the present record.

As described in the declarations, it would not have been obvious for one of ordinary skill in the carpet tile art to use rebond foam in a cushion back carpet tile.

Milliken & Company had two rebond foam cushion back carpet tile products on the market, the Legato™ carpet system and the Tesserae™ carpet system. The Legato carpet tiles have a special interlocking wave shape while the Tesserae carpet tiles are square. At least the Milliken Legato™ carpet system (sold in Home Depot stores) enjoyed commercial success.

It was surprising and unexpected that a polyurethane rebond foam would work in a cushion back carpet tile, much less a carpet tile rated for commercial use. It took many years for Milliken to develop a performing carpet tile which has a similar look and feel as residential broadloom.

As set forth, for example, in pages 71 - 77 of the present application, cushion back carpet tile samples having the same construction as Milliken Comfort Plus® cushion back carpet tiles with the exception of rebond foam (flame laminated to fiber- glass and felt) rather than filled

U. S. PTO Customer No. 25280

Case #5113D

polyurethane foam (in-situ laminated to the fiberglass and felt) (same face construction, same layer construction) were tested and surprisingly and unexpectedly found to have performance characteristics at least on par with filled polyurethane cushion back carpet tiles and to be rated for commercial use.

As one of skill in the art, Mr. Kilpatrick has concluded that contrary to the position taken by the Office Action, one of skill in the art would not have been motivated to substitute the foam layer in the tile disclosed in Higgins '857 with the rebond foam materials from De Simone '207.

In addition to the deficiency in the teachings of De Simone '207, it is also respectfully submitted that the references fail to disclose a carpet tile with a flame laminated backing, much less a flame laminated cushion backing including a reinforcement layer and a textile backing.

The other art relied upon in addition to Higgins '857 and De Simone '207 fails to make up for the lack of teaching in De Simone '207.

Accordingly, reconsideration and withdrawal of all outstanding rejections is requested at this time.

CONCLUSION:

In light of the claim amendments and arguments set forth above, Applicants respectfully submit that the art of record does not establish a *prima facie* case of obviousness with respect to the claims as written. Accordingly, it is submitted that all claims are in condition for allowance at this time.

U. S. PTO Customer No. 25280

Case #5113D

While an attempt has been made to address all outstanding issues, to any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

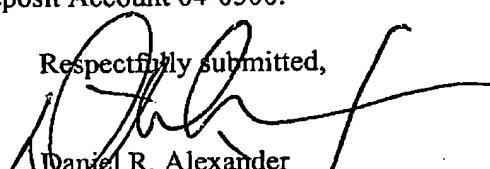
U. S. PTO Customer No. 25280

Case #5113D

An RCE accompanies this Amendment. To any extent required, a request for an additional extension of time is hereby made. Please charge any fees or credit any overpayment in connection with this Amendment to Deposit Account 04-0500.

January 24, 2005

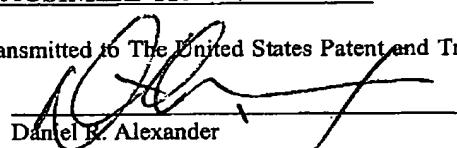
Respectfully submitted,



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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted to The United States Patent and Trademark Office at 703-872-9306 on January 24, 2005.



Daniel R. Alexander  
Attorney for Applicant(s)